

Samuel Sheppard Merch^t *John Scarlett* and *John Snell*, who were Bond Creditors of *Rich^d Kent* Goldsmith, deceas'd. } Appellants.

John Kent, Executor of the said *Rich^d Kent*, *John Bradley* and *Eliz.* his Wife, late *Eliz. Humble*, *George Robinson* } Respondents.
and all the rest of the Bond Creditors of the said *Richard Kent*.

By the Order (Complained of in the Appeal) the Appellants are to be paid equally with the other Bond Creditors, but they Insist upon it in their Appeal that they ought to be first paid their whole Debts because they have got Judgments against the Executor.

The C A S E of the Respondents *John Bradley* and his Wife, *George Robinson* and the rest of the Bond Creditors of the said *Richard Kent*.

R *ichard Kent*, who was a Goldsmith in *London*, by his Will devised his whole real Estate to be sold, and also his Personal Estate for the payment of his Debts, and at his Death he owed no Debt by Judgment or Superiour to a Bond.

28 June 1692. The Earl of *Kildare* had a Demand of 8000 *l.* principal Money out of Mr. *Kent*'s Estate, and to be paid it; Exhibited a Bill in Chancery against *Kent*'s Executors. And The Cause was heard by the Lords Commissioners of the Great Seal, and the Lord of *Kildare*'s Debt was Decreed to be paid out of the Land, and (amongst other things) it was Decreed, that such of the Creditors of *Richard Kent* as should come in before the Master and prove their Debts, should receive Satisfaction for the same out of the Testators Personal Estate; and Money to be raised by Sale of the Real Estate, ACCORDING TO THE COURSE OF LAW, in payment of Debts by Executors or Administrators.

* The now Appellants, together, with several of the Respondents being all of them Bond Creditors being not satisfied with that Decree, Exhibited a Bill in Chancery against the Lord of *Kildare*, and against *Kent* and the rest of the Defendants to that first Suit, and therein Charged themselves (the Plaintiffs) to be only Creditors by Bond.

19 June 1696. The last mentioned Cause came on to be heard before the late LORD CHANCELLOR SOMMERS, and then the former Decree was varied in this Particular, viz. That the Testators Personal Estate and Money to be raised by Sale of the Real Estate, was to be applyed towards payment of the Plaintiffs Debts ACCORDING TO THE DIRECTION OF THE TESTATORS WILL. And at this Time no Notice was taken of any Judgment obtained by the Appellants: Nay, the Appellants themselves who obtained this last Decree for several Years, together, Acquiesced therein, and Consented under their Hands to receive their Dividends in Proportion, with all the other Creditors of a Sum of 1650 *l.* Part of the Testators Estate, which at the Prosecution and Charge of the now Respondents, was brought in before a Master in Chancery, and they received their Dividends accordingly.

But the three Appellants Mr. *Shippard*, *Scarlet* and *Snell*, have lately set on Foot a New Pretence that they are Creditors by Judgment obtained by them against the said Executor *John Kent*, before this last Suit Commenced, and under that Pretence would now carry away the Remainder of the Testators Estate, and would have the Assistance of a Court of Equity to Defraud all the other Bond Creditors who are about Twelve in Number.

20 May 1699. The matters being Stated specially by a Masters Report.

12 July 1701. The present Lord Keeper upon hearing the matter of the said Report, and reading the former Decrees, Declared and Ordered that the Testators Real and Personal Estate ought and should be applied according to his Will, and the last Decree made upon the Appellants Bill SHARE AND SHARE ALIKE WITHOUT PREFERENCE.

4 May 1702. Upon the Appellants Petition they obtained a Rehearing before the LORD KEEPER who continued still of the same Opinion and dismissed their Petition, and since that another Sum of 800 *l.* hath been divided equally by the Mr. in Chancery accordingly.

Note, The Lord Keeper's Opinion is agreeable to the late Lord Chancellor's in the Decree of the 11th of June 1696, who directs that the Creditors shall be paid according to the Will, and that is equally.

Objection. The Appellants only Pretence is, that by the common Law, if there be several Creditors in equal Degree, and one of them can prevail with the Executor to confess a Judgment to him, and to delay the rest, he shall be paid first.

Answer 1. The Executor *John Kent*, hath made use of that Liberty in an extraordinary Manner, For he hath got a standing Draught of a Plea in Bar, viz. That there are such and such other Bond Creditors which have obtained Judgment against him, and that he had no Assets beyond what will satisfy them, which Plea is so long, that it will cost above 200 *l.* to take out a Copy of it, others he hath put to their Election to proceed either in Law or Equity, and prevented them that Way, which Methods have so discouraged the rest of the Bond Creditors that none will sue him at Law. But it is supposed the Appellants were his Favourites, and he was kinder to them. And to some Creditors it appears he hath been very kind; for he hath paid the Charges of the Judgments himself, and brought it to the Testators Account.

2. The Appellants have dealt fraudulently by the Respondents, in pretending themselves to be only Bond Creditors, and concealing their Judgments so obtained, and drawing in the Respondents to be Joynt Plaintiffs with them in Chancery, and to prosecute this Suit at equal Charge for near seven Years, and to submit to divide equally the first Money that was recovered by this Suit, and now at last to raise dispute, and claim to be preferred in Payment on Pretence of their dormant fraudulent Judgments.

3. The Testator's Estate being to be got in only by help of a Court of Equity, it is most equitable it should be distributed equally, being recovered at equal Expence. — And both Respondents and Appellants being in equal Degree for any thing appears by their Bill. And a proportionable Application of the Testators Estate is what the Decree of the LORD SOMMERS directs which still remains in force.

Wherefore in regard the Intention of the Testator's Will was to have all his Debts paid alike, and that Intention hath been decreed by the late Lord Chancellor Sommers, and complied with by the Appellants, and twice confirmed by the present Lord Keeper upon a Hearing and Rehearing. It is humbly hoped the same shall be ratified by your Lordships, and the Appeal dismissed with Costs.

Wm. Dobyns.